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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,053	04/04/2007	Bernd Schessl	2004P00190WOUS	5469

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

HECKERT, JASON MARK

ART UNIT	PAPER NUMBER
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1711

NOTIFICATION DATE	DELIVERY MODE
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04/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Office Action Summary	Application No. 10/589,053	Applicant(s) SCHESSL ET AL.	
	Examiner JASON HECKERT	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments filed 1/20/10 have been fully considered but they are not persuasive.
2. In regards to Kauffman, applicant argues that the device is not disclosed as being coupled to an element of the crockery basket because it is fixed to an element of the crockery basket. Thus, it appears as if the applicant is arguing that the device is removable, but the claims do not limit the device as being so. As far as the examiner is considered, "coupled" and "fixed" are synonyms. Furthermore, the device of Kauffman is not disclosed as being rotatable, and if it is fixed it would be substantially non-rotating. Furthermore, one of ordinary skill possesses the abilities to make fixed elements removable and removable elements fixed. The variety of art presented exemplifies these features.
3. In regards to Patera, the examiner is confused how the first section of the instant application is capable of being coupled to a vertical element and a horizontal basket element of the dishwasher (claim 12). The applicant's arguments appear to say that vertical and horizontal attachment is mutually exclusive, which is in contrast to the claims. That said, the examiner will withdraw the rejection in view of Patera alone, however the 103 rejection in view of Kauffman in view of Patera will be maintained. Kauffman discloses coupling to a vertical element while Patera discloses coupling to a horizontal element with the interrupted portion of the instant application. Combining these elements would be obvious to one of ordinary skill and would provide the interrupted portion along with horizontal and vertical attachment (claims 11 and 12).

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4. In regards to Pille, the examiner does not agree that Pille's device is inherently a rotating device. Pille makes no mention of rotation. Furthermore, if the snap fit coupling mechanism is snug, rotation would not occur, and could be considered "substantially non-rotating". Furthermore, if the device were rotating, then the cups would jostle around within the machine, which would not be advantageous. Thus, the applicant's arguments are not persuasive.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9-11 rejected under 35 U.S.C. 102(b) as being anticipated by Kauffman. Kauffman teaches a fixing device comprising a first section 25 that can be coupled to a vertical section of a crockery basket and a second section 24 extending substantially vertically forming a curve. The device can be removable or integrated (col 2 lines 45-55). The second portion can be elastically deformed manually. The first area can be construed as a connecting region having at least one receiving area suitable for fixing to a vertical basket. The device is capable of being attached to a cutlery basket.

7. Claims 9-11, 14, 18 rejected under 35 U.S.C. 102(b) as being anticipated by Pille. Pille discloses a fixing device comprising a first section attached to a vertical portion of a crockery basket (items 44, 56), a second curved section 36, wherein the first region additionally has a portion 48 pointing away in the direction of the second

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portion which functions as a retaining clip, thus reading on the applicant's retaining region. The device can be fixed to a cutlery basket.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12-13, 15-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Kauffman in view of Patera. Kauffman teaches a clip attached to a vertical part of a basket, but does not teach an interrupted clip that can be attached to a horizontal portion of the basket. Patera teaches a clip that can be attached to a horizontal portion and has an interrupted second portion. This device performs the same function of fixing. It would have been obvious at the time of invention to modify Kauffman and further include a horizontal clip with an interrupted second portion, as taught by Patera, in order to fix articles. Additionally, such a modification would read on claim 15. Figure 3 of Patera shows how the curved portion extends through the wall of the basket. Thus, with proper orientation, such a vertical post of the basket (or Kauffman's vertical post) could extend into the interrupted portion. This merely depends on the location of the clip within the basket. The end region of Patera is solid. In regards to claims 21, the retaining region is ambiguous. Any part of the clip 10 of Patera, such as biased member 40, can read on the retaining region, as it can be considered to protrude from

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the first section and be located between the first section and the second section. Both Patera and Kauffman teach elastic deformability.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6827225 to Miilu et al teaches a rack clip.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art
Unit 1711

JMH
10.